

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHAVONDA HAWKINS, on behalf of  
herself and all others similarly situated

Plaintiff,

v.

THE KROGER COMPANY,

Defendant.

Case No.: 15cv2320 JM(AHG)

**ORDER REQUESTING  
ADDITIONAL BRIEFING;  
VACATING EXISTING DATES  
SUBJECT TO BEING RESET**

Upon review of the motion for class certification, the court has determined that supplemental briefing on a handful of questions would be beneficial. Accordingly, the parties are instructed to research and brief the following issues:

1. How does the availability of individual atypical defenses (statute of limitations, lack of reliance) as to a proposed class representative disqualify a plaintiff from advocating and proving, if possible, the reasonable consumer standard? In other words, do defenses such as absence of reliance, causation, or a statute of limitations bar disqualify the Plaintiff from being an eligible class representative?
2. Under CAFA, the court possesses original jurisdiction where the amount in controversy exceeds \$5,000,000, there are more than 100 class members and “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). For diversity purposes, a corporation is

1 a citizen of its state of incorporation and its principal place of business. 28 U.S.C.  
2 § 1332(c)(1). Now that Plaintiff is seeking to only pursue her individual claims  
3 and those brought solely on behalf of a California class, the court has concerns  
4 regarding subject matter jurisdiction under CAFA that the parties need to address.  
5 These questions need to be evaluated and answered in the context of this case,  
6 namely the existence of CAFA jurisdiction in a class action originally filed in  
7 federal court. Based on the evidence submitted in connection with Plaintiff's  
8 motion to certify the class, questions are now raised relevant to the amount in  
9 controversy.

- 10 (a) What remaining relevance, if any, exists for Plaintiff's original allegations  
11 of compliance with CAFA's jurisdictional threshold of \$5,000,000 in light  
12 of the pending motion to certify solely a California class?
- 13 (b) May, or should, the court allow Plaintiff to pursue only California class  
14 certification where Plaintiff (i) has never sought to amend the operative  
15 complaint which seeks certification of a nationwide class only, and (ii) first  
16 raises the request in a motion for class certification?
- 17 (c) What categories of damages should be included in the amount in  
18 controversy? Can a request for an award of punitive damages "in amount  
19 to be proven at trial" be included in the amount in controversy? And, if  
20 inclusion of punitive damages in the amount in controversy is proper here,  
21 how are such damages to be calculated?
- 22 (d) A putative California class also raises questions regarding the minimal  
23 diversity requirement. All Plaintiffs, including the unnamed class  
24 members, are now California citizens, but there is some confusion  
25 regarding Defendant's citizenship. While Plaintiff has consistently alleged  
26 that Kroger is incorporated in Delaware, she has made conflicting  
27 representations regarding its principal place of business, alleging in the  
28 complaint that its principle place of business is in California, yet asserting

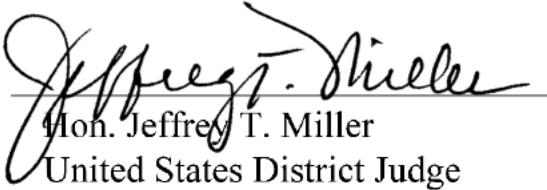
1 in its Class Certification Reply that it is a resident of Ohio. (*Compare* Doc.  
2 No. 1 at ¶ 13 *with* Doc. No. 115 at 9.) Therefore, the parties are required  
3 to file declarations clarifying the states in which Kroger is a citizen and its  
4 principle place of business (or headquarters). If minimal diversity no  
5 longer exists, the parties need to address whether CAFA allows a court to  
6 retain jurisdiction over a class action, where, as here, (i) certification of the  
7 original class is no longer being sought, (ii) Plaintiff has unilaterally  
8 through an exclusive amended class eliminated diversity, and (iii) the class  
9 seeking to be certified was not previously pled.

10 Plaintiff's responsive brief, not to exceed twenty (20) pages, must be filed on or  
11 before July 6, 2020. Defendant's brief, not to exceed twenty (20) pages, must be filed on  
12 or before July 27, 2020.

13 The pending Objections to Judge Goddard's sanctions order are taken under  
14 submission. (Doc. Nos. 152, 153.) As a consequence, the need to enroll in continuing  
15 legal education is stayed pending further order of this court.

16 IT IS SO ORDERED.

17 Dated: June 15, 2020

  
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19 Hon. Jeffrey T. Miller  
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